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January 8, 2003

Ms. Marlene H. Dortch
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Memorandum of Ex Parte Presentation**
WC Docket No. 02-384, Application by Verizon Maryland for Authorization to Provide In-region, InterLATA services in Maryland, Washington D.C., and West Virginia

Dear Ms. Dortch:

On January 7, 2003, Vincent M. Paladini of Piper Rudnick LLP, representing CloseCall America, Inc., met with Gregory M. Cooke, Gail Cohen, Marcy Greene, Jon Minkoff, and Cecilia Seppings of the Wireline Competition Bureau. Mr. Paladini discussed the conditional recommendation made by the Maryland Public Service Commission ("MD-PSC") to the Commission with regard to the entry of Verizon Maryland Inc. into the long distance market in Maryland. Mr. Paladini also described the relationship between the MD-PSC's Line Sharing condition and the issues involved in Maryland Public Service Commission Case No. 8927.

Pursuant to Section 1.1206(b) of the Commission's rules, this letter and attachments are being electronically filed. I respectfully request that this letter be placed in the record for the proceeding identified above.

Sincerely,

Vincent M. Paladini

Enclosures

cc: Gregory M. Cooke
Gail Cohen
Marcy Greene
Jon Minkoff
Cecilia Seppings

BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND

IN THE MATTER OF	)	
	)	
Complaint of CloseCall America, Inc.	)	
	)	**Case No. ____**
	)	
	)	

<u>COMPLAINT OF CLOSECALL AMERICA</u>

CloseCall America, Inc. ("CloseCall") is a Maryland-based telecommunications company offering local, long distance, digital wireless, and Internet services primarily in Maryland, Delaware and New Jersey. CloseCall petitions the Public Service Commission of Maryland ("Commission") to direct Verizon Maryland, Inc. ("Verizon" or "VZ-MD") to provide wholesale access to voice messaging and digital subscriber line ("DSL") services that can be provided on loops that are also used for competitive local exchange carrier ("CLEC") services. As set forth below, Verizon has impermissibly tied its enhanced and local exchange services by refusing to provide voice mail and DSL services on loops over which its competitors provide local exchange services. Moreover, Verizon punishes consumers who switch to competitive local exchange services by abruptly disconnecting pre-existing voice messaging and DSL services. These anti-competitive practices are harmful to competitive entry and contrary to consumer interests.

I. Verizon's Refusal to Make Voice Messaging and DSL Services Available on a Wholesale Basis is Calculated to Chill Local Competition in Maryland

<u>A. The Maryland environment that CloseCall finds itself in, marked by on-going Verizon tactics that frustrate competition in the local exchange market and restrict consumer choice, is telling</u>

By way of background, more than seven years have passed since the Commission issued its ground-breaking ruling on local competition and over six years have passed since the passage of the federal Telecommunications Act, yet VZ-MD's competitors have gained precious little traction in the local service market. Specifically, recent statistics from the FCC indicate that VZ-MD retains 96% of the local market, and 99% of the local residential market in Maryland.[1]

This low level of competitive entry is no small accident. VZ-MD has taken every opportunity to impede the development of competition in this state. Verizon's rigid opposition to local competition first came to light when the Commission considered MFS's effort to enter the local market. In that proceeding, Verizon argued that local competition "jeopardizes the substantial contribution that business revenues provide to the shared and common costs of Maryland's ubiquitous telephone network."[2] Later in that proceeding, Verizon sought to impose unreasonably high interconnection costs on local competitors.[3] Moreover, when the Commission issued its first UNE rate order, VZ-MD responded by issuing a "compliance" filing that intentionally misapplied the Commission's decision in order to generate UNE rates that were higher than the Commission intended.[4] Verizon initially resisted its obligation to provide combinations of unbundled network elements to CLECs, necessitating litigation and a further Commission order directing Verizon to provide combined network elements.[5] In light of this history, it is clear that Verizon's practice of punishing Maryland consumers who utilize CLEC services by denying access to its voice messaging and DSL services is an unacceptable anti-competitive tactic that Verizon will continue to employ until the Commission compels it to stop.

[1] Trends in Telephone Service, August 2001, Table 9.5, Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission.

[2] *In the Matter of the Application of MFS Intelenet of Maryland*, Case No. 8584, Order No. 71155 at 13 (April 25, 1994) (citing Bell Atlantic Maryland's position). Bell Atlantic - Maryland also sought to limit MFS-I's authority to resale only. Id. at 14.

[3] *In the Matter of the Application of MFS Intelenet of Maryland*, Case No. 8584, Phase II, Order No. 72348 at 14 (December 28, 1995).

[4] See *Motion [of AT&T and MCI in Case 8731 Phase II] for Rehearing*, pp. 5ff (July 31, 1998) (detailing Bell Atlantic Maryland's "manipulation" of the fill factors in the compliance filing).

[5] See *In the Matter of the Petitions For Approval of Agreements and Arbitrations*, Case Number 8731, Order No. 74671 (1998).

B. Verizon's refusal to provide voice messaging services on a wholesale basis punishes Maryland consumers who obtain local service from Verizon's competitors

Voice messaging services provide to business and residential customers the ability to record messages when their telephone line is busy or cannot be answered and can also provide reminder, personal calendar, and call transfer functionality. Verizon makes voice messaging services available in Maryland, but only to consumers who choose Verizon as their local exchange carrier. This arbitrary restriction substantially undermines CLEC efforts to attract new customers in Maryland, and currently prevents CloseCall from providing local service to over 10% of its potential new customers. Moreover, this restriction severely disadvantages Maryland consumers, who are unable to obtain local exchange service from the provider of their choice because doing so would require them to lose their existing voice messaging service.

CloseCall recently conducted a survey which indicated that 35 out of 305 customers requesting CloseCall local service ultimately did not become CloseCall subscribers because Verizon would have responded by disconnecting their voice messaging services. As further explained below, Verizon restricts access to its voice messaging products to discourage customers from seeking competitive services, and does so in a manner that harms consumers.

In particular, when a customer switches from Verizon to a competitive local service provider, Verizon terminates the customer's access to voice messaging service immediately, without warning, and without offering any alternative option for maintaining voice messaging service except re-subscribing to Verizon's local service. First, this practice improperly ties in the consumer market the provision of Verizon's voice messaging and local exchange services. Second, suddenly terminating consumer voice messaging service without providing reasonable warning or service alternatives causes substantial consumer disruption and inconvenience and can be particularly punitive and unfair to our new customers. Specifically, Verizon does not always fully remove the voice mail answering functionality from the switching customer's line. Rather, Verizon merely blocks the customer's access to their voice mail box. As a result, incoming calls receive a system error code after briefly ringing the customer's telephone, making it difficult for customers to answer their telephone calls and precluding the use of answering machines or other call-answering services.[6] In addition to this callous treatment, customers also lose their ability to access messages that they saved before Verizon unilaterally terminated their service. Moreover, when our customers call Verizon to try to resolve these problems, they are told that they must switch all of their local services back to Verizon in order to restore their voice messaging functionality. Even if the customer agrees to re-subscribe to Verizon's local exchange services in order to restore their voice messaging service, however, they are informed that their previously-programmed greetings, reminders, personal messages and saved messages have been permanently deleted.

Although alternative providers of voice messaging services exist and provide service in certain markets, Verizon's voice messaging service includes unique features and capabilities that are especially important to small and residential consumers and that are not practically available to consumers from other sources. For instance, "stutter dial tone," which is only available from Verizon, is an important feature that notifies consumers that they have voicemail. Without stutter dial tone, voice messaging customers would have to place frequent telephone calls to their voice messaging service to check for new voicemails. Emerging local exchange carriers cannot reasonably finance the equipment and facilities required to provide the level of functionality that Verizon's voice messaging services currently provide. In addition, the Telecommunications Act

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[6] Specifically, unless the acquiring competitive carrier makes special arrangements with Verizon when processing the customer migration, Verizon will not terminate the "call-forwarding" aspect of the voice messaging functionality, and callers attempting to reach the customer will instead receive a prompt requesting that they enter a pass code.

does not require that competitive carriers purchase specific equipment or other facilities in order to enter new markets. Rather, the Telecommunications Act established without prejudice or discrimination that competitors may utilize market-entry strategies that rely on resale, unbundled network elements ("UNEs"), or the deployment of new facilities.[7]

Furthermore, in order to switch to a new voice messaging system, customers must set up new passwords, greetings, and learn to operate a voice messaging system that may be substantially different from the one they presently use. This additional inconvenience and burden can be a substantial disincentive for customers, especially small business and residential, who might otherwise subscribe to competitive local services.

In sum, Verizon's systematic refusal to provide voice messaging services to consumers who obtain local telephone services from Verizon's competitors is inequitable to Maryland consumers, undermines the Commission's efforts to foster local competition, and must be remedied. Consequently, we request that the Commission direct Verizon to provide wholesale access to voice messaging services. At the very least, the Commission should direct Verizon to provide, as a stand-alone and separately-billed product, voice messaging services to customers who choose to obtain local services from competitive carriers. In addition, the Commission should specify that customers should not be subjected to any disruption of existing service or service provisioning delays when obtaining resold or Verizon-provisioned voice messaging service in this manner. Rather, Verizon should be directed to incorporate the provisioning of voice messaging into its existing CLEC ordering processes, in the same manner as it currently provides access to call waiting and caller-ID services.

[7] See *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, at 371-72 (1999) (noting that competitors may provide service by leasing UNEs).

C. Verizon's refusal to provide DSL services on a wholesale basis punishes Maryland consumers who obtain local service from Verizon's competitors

Broadband communications services, such as DSL, are becoming a fundamental requirement for businesses of all sizes, and a consumer priority. This is especially true for telecommuters and small business customers who need access to high-speed data capability, but on a small scale. Moreover, sophisticated but small customers such as these are particularly interested in obtaining the substantial cost and customer service benefits offered by competitive local service providers, such as CloseCall, but cannot afford to lose their broadband access. Granted, the customer may be able to obtain broadband access on a second, dedicated loop. However, the extra cost of a separate telephone line exclusively for DSL access can erase the cost savings offered by the competitive local service provider.

Currently, Verizon unfairly leverages this DSL market advantage to win back its lost local service customers. Specifically, knowing that a number of CLECs, including CloseCall, do not currently provide similar DSL services to their customers, Verizon contacts the customer and offers to provide line-sharing DSL service over the customer's local loop, but only if the customer subscribers to Verizon's local telephone service. This practice significantly hamstrings competition in the local exchange market by restricting access to cost-effective broadband service to Verizon's local exchange customers. This attempt to tie in the marketplace Verizon's broadband and local exchange services in order to discourage consumers from subscribing to competitive local services is contrary to the public interest, bars consumers from obtaining the benefits of local exchange competition, and chills competitive entry in the local service market. This practice is particularly telling in light of Verizon's pending request for Section 271 authority to provide long-distance services in Maryland. It would set an unfortunate precedent to permit Verizon to use its provision of non-local exchange services to preclude competition in the local exchange market.

In addition, restricting access to Verizon's line-sharing DSL products solely to Verizon's local exchange service customers disadvantages Verizon's existing DSL service customers, because it forces upon them significant external (i.e., non-pecuniary) transaction costs if they choose to subscribe to a competitive local carrier. Specifically, a cost-sensitive and Internet-intensive subscriber will be very unlikely to transfer its local services from Verizon to a competitive carrier if doing so requires acquiring a new broadband service provider, an additional telephone line and new broadband equipment, a new ISP, and the publication of a new email address.

Consequently, it is vital for the establishment of local exchange competition that the Commission direct Verizon to provide uniform access to line-sharing DSL service and no longer reserve access to such services solely for its own local exchange customers. In addition, the Commission should specify that CLEC customers should not suffer any disruption of existing DSL service or encounter discriminatory service provisioning delays when obtaining resold or Verizon-provisioned line-sharing DSL services. Rather, Verizon should be directed to incorporate the provisioning of line-sharing DSL into its existing CLEC ordering processes, in the same manner that call waiting and caller-ID services are currently handled.

II. The Commission has sufficient legal authority and a statutory mandate to curtail Verizon's improper practice of tying voice messaging and DSL services to its local exchange service

Pursuant to §2-113 of the Public Utility Companies Article, Annotated Code of Maryland, the Commission has "substantial latitude" to ensure that public utilities operate in a manner that serves the public interest and compels the Commission to use this authority to "promote adequate, economical and efficient delivery of utility services in the State without unjust discrimination."[8] The Commission has previously determined that this provision authorizes it to review network use and interconnection in the competitive market.[9] It is also well established that the Commission has the authority to place specific requirements and duties on telecommunications carriers, including Verizon, so long as those requirements are competitively neutral and do not interfere with universal service obligations.[10] Moreover, the Commission has broad authority under Maryland law to regulate VZ-MD in a manner that best serves the interests of Maryland consumers. This authority and mandate are echoed in §4-301, which in the context of empowering the Commission to adopt alternative regulations, indicates that the Commission's actions should protect consumers by "producing affordable and reasonably priced basic local exchange service," ensuring the "quality, availability, and reliability of telecommunications services throughout the State," and "encourag[ing] the development of competition."

While the FCC has not yet required that voice messaging and line-sharing be offered at wholesale rates by incumbents such as Verizon, the FCC has not limited the authority of the states to do so. Certainly, pursuant to the Telecommunications Act, a Commission determination that voice messaging or line-sharing DSL services were telecommunications services[11] provided by VZ-MD at retail would require the provision of wholesale access to these services.[12] However, the Commission need not invoke such federal authority to resolve this complaint in a beneficial manner. As noted above, the Commission's authority is sufficient to compel Verizon to provide wholesale access to voice messaging and line-sharing DSL services.[13]

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[8] Public Utility Companies Article §2-113.
[9] See *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Case Number 8731, Order No. 74671, at 13.
[10] *Id.* at 9.
[11] 47 U.S.C. § 153(46).
[12] 47 U.S.C. § 251(c)(4)(A).
[13] As further discussed below, relying solely state authority, several public utility commissions within Verizon's

Moreover, the Commission has previously used its statutory authority to compel Verizon to modify anti-competitive behavior, benefiting local competition and the interests of Maryland consumers. For instance, the Commission has ordered Verizon to combine network elements and refrain from disassembling network elements that were already combined because "[s]uch separation and recombination serves no public purpose and provides no cost benefits" and because "disassembling network elements will put customers out of service unnecessarily while the disconnection and subsequent reconnections are made."[14]

Similarly, Verizon's continued refusal to provide voice messaging and DSL on loops that are also used by its competitors to provide local telephone service serves no public purpose and provides no cost benefits. Moreover, Verizon's practice of suddenly disconnecting voice messaging and DSL services from subscribers who switch their local exchange service to Verizon's competitors puts customers out of service unnecessarily, without justification and with maximum inconvenience. Consequently, the Commission should direct Verizon to provide to its competitors wholesale access to voice messaging and DSL services that can be provided on the same loop used by a CLEC to provide local service. In the alternative, Verizon should be directed to provide consumers with retail access to such services without any disruption and/or lost functionality .

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service region have already directed Verizon to provide wholesale access to voice messaging services. See *infra* at III.

[14] *In the Matter of the Petitions for Approval of Agreements and Arbitration of Unresolved Issues Arising Under Section 252 of the Telecommunications Act of 1996*, Case Number 8731, Order No. 74671, at 17.

III. The FCC and Certain State Public Utility Commissions Have Determined that Wholesale Access to Verizon's Voice Messaging and Loop-Sharing DSL Service Serves the Public Interest

Verizon currently offers voice messaging services on a wholesale basis in other states in the Northeast and Mid-Atlantic region. Specifically, the New York, Rhode Island,[15] and Vermont[16] state commissions have ordered Verizon to provide wholesale access to voice messaging, and such access is required by statute in Delaware.[17] Nevertheless, Verizon refuses to provide wholesale access to such services in Maryland. As explained above, a lack of wholesale access to voice messaging and shared-loop DSL services handicaps Verizon's competitors and harms Maryland consumers by forcing them to choose between obtaining competitive local exchange services from the carrier of their choice and obtaining the voice messaging service that they desire.

Moreover, in response to Verizon's own petitions, the FCC has endorsed Verizon's provisioning of DSL service on loops also used by its competitors to provide local service in Connecticut and Pennsylvania.[18] In so doing, the FCC held that enabling competitors to provide

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[15] See *In Re: The Petition of Eastern Telephone, Inc. Requesting Verizon Rhode Island to File a Tariff Provision Allowing for the Resale of Voice Messaging Service*, Rhode Island Public Utilities Commission, Docket No. 3333, Order No. 16938 (December 31, 2001).

[16] The Vermont Public Service Board determined that voice messaging is a telecommunications service under Vermont law. See *Joint Petition of New England Telephone & Telegraph Company d/b/a NYNEX, NYNEX Corporation, and Bell Atlantic Corporation for Approval of a Wholly-Owned Subsidiary of Bell Atlantic Corporation into NYNEX Corporation (In Re: Compliance Phase)*, Vermont Public Service Board, Docket No. 5900, Order, (January 31, 2000).

[17] We note that Massachusetts and Virginia have declined to require Verizon to provide wholesale access to voice messaging. In its Order denying a complaint filed by RCN Telecom Services of Massachusetts, Inc. regarding Verizon's failure to make voice messaging available for resale, the Massachusetts Department of Telecommunications and Energy ("D.T.E.") concluded that it was not compelled to require Verizon to provide wholesale access to voice messaging by the Telecommunications Act or by the FCC's rules, and that it did not want to "broaden its jurisdiction" over previously unregulated services "[r]egardless of whether it is more efficient for competitors to resell [voice mail services] than it is to provide the services through other means." See, *Complaint of RCN Telecom Services of Massachusetts, Inc. against New England Telephone and Telegraph Company d/b/a Bell Atlantic - Massachusetts for Failure to Make Voice Messaging Service Available for Resale*, Mass. D.T.E. 97-101 (November 9, 1998).

[18] See, *Applications of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, 15 FCC Rcd. 14032 (2000).

resold DSL service to their voice subscribers over a single local loop would benefit consumers by expanding competition in the provision of advanced services.[19] For the very same reasons, Maryland consumers would benefit from the ability to independently select a DSL provider and a local exchange carrier. Consequently, pursuant to the Commission's statutory authority and mandate, the Commission should direct Verizon to provide wholesale access to DSL service to be provided on CLEC loops or, in the alternative, compel Verizon to provide loop-sharing DSL to CLEC customers on a retail basis.

V. Conclusion

As discussed in detail above, Verizon's refusal to make voice messaging and DSL services available on customer loops over which its competitors provide local service is an unreasonable and anti-consumer practice that is contrary to Maryland law and public policy. This practice is yet another example of Verizon's continued effort to frustrate the Commission's efforts to open Maryland's local exchange market to competition. Several state public utility commissions in Verizon's service region have held that this practice is contrary to consumer interests and have ordered Verizon to make voice messaging services available on loops over which its competitors provide local exchange service. In addition, the FCC has determined that wholesale access to Verizon's line-sharing DSL services supports competition and serves the public interest. CloseCall respectfully requests that the Commission act expediently to compel

[19] *Id.* at para. 5.

Verizon to make voice messaging and loop-sharing DSL available to its competitors on a wholesale basis or, in the alternative, direct Verizon to make these services available directly to consumers on a stand-alone and separately-billed basis without any disruption and/or lost functionality.

Respectfully submitted,

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Dated: May 2, 2002

December 16, 2002

Mr. William R. Roberts
President
Verizon Maryland Inc.
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Baltimore, Maryland 21202

Re: In the Matter of the Review By the Commission Into Verizon Maryland Inc.'s Compliance with the Conditions of 47 U.S.C. §271(c), Case No. 8921

Dear Mr. Roberts:

On April 12, 2002, Verizon Maryland Inc. ("Verizon") filed its request in Maryland for the Maryland Public Service Commission ("Commission") to consider the facts regarding Verizon's decision to enter the long distance market via a §271 application at the Federal Communications Commission ("FCC"). This request followed two years of testing of Verizon's wholesale operations support systems ("OSS") in Virginia and related corrective actions to those systems. The April 12th filing also reflected the fact that Verizon had requested the Maryland Public Service Commission to refrain from implementing Maryland specific OSS testing and await the outcome of the Virginia test results.[1]

The Maryland Commission's agreement with the above request ensured that any §271 consideration here would of necessity follow Virginia's consideration as our anchor state, Verizon Virginia's application to the FCC and FCC approval. Thus, this process ensured, as well, that Maryland would be one of the last Verizon states to consider a §271 application. The FCC has permitted applicants for §271 authority to rely upon OSS evidence from another state, referred to as the anchor state, provided the FCC has already approved the anchor state's §271 Application, or is given the opportunity to review the anchor state's OSS simultaneously, such as in a multi-state filing.

During the past several months, the Maryland Commission has conducted a detailed examination to determine the status of Verizon's compliance with §271(c) of the

[1] Maryland agreed to do so based upon Verizon's assertion that the Maryland and Virginia wholesale OSS are comparable, and in so doing would avoid duplicative testing and unnecessary cost to Verizon. Other parties disagreed with this position.

Telecommunications Act of 1996 ("1996 Act"). 47 U.S.C. §271(c). In the course of this examination, the Commission received into evidence thousands of pages of documents regarding checklist compliance, testing, validation, the Virginia consultative report, transcripts from the Virginia proceeding and other issues, as well as testimony and briefs from the parties, including several competitive local exchange carriers ("CLECs") and the Office of People's Counsel. The Commission conducted five days of evidentiary hearings from October 28 through November 1, 2002. In addition, on November 4, 2002 the Commission heard live surrebuttal regarding the FCC's October 30, 2002 approval of the Verizon Virginia §271 application. Since Virginia was the anchor state for OSS testing for Maryland, the Maryland Commission was unable to act prior to such approval being received. Now with the FCC approval of Virginia's OSS having been granted, the hearings in this proceeding concluded, over 200 pages of post-hearing briefs received and a transcript in excess of 1700 pages reviewed, this Commission can now complete its expeditious review of this matter.

This Commission has a long history of fostering competition in the local market. At one time, Maryland was considered a national leader in the opening of telecommunications' markets to competition. Today, this Commission is greatly concerned about the State of Maryland's inability to build upon the initial gains achieved in opening the local market to competition and the apparent sluggish nature of local competition growth.

Maryland began opening the local telephone service market to competition in 1994. In *Re MFS Intelenet of Maryland, Inc.,* 85 Md. PSC 38 (April 25, 1994), this Commission granted MFS authority to provide telephone services in Maryland, approved the unbundling of links and ports and required Verizon (then Bell Atlantic-Maryland, Inc.) to provide for interconnection with MFS. In Phase II of that proceeding, the Commission set the rates, terms and conditions for interconnection between the carriers. *Re MFS Intelenet of Maryland, Inc. Phase II,* 86 Md. PSC 467 (Dec. 28, 1995).

The passage of the 1996 Act interrupted Maryland's course of action as it imposed new duties and new processes on state agencies with regulatory responsibilities over telecommunications carriers. Enactment of the 1996 Act required the Commission to reexamine previously resolved issues to ensure compliance with new FCC directives. Further, the new process removed this Commission's autonomy and forced the Commission to constantly revise its vision of how competition can and should be achieved in Maryland to reflect federal regulatory and judicial decisions.

The State of Maryland is no longer a national leader in telecommunications competition. To the contrary, according to the FCC Report on the status of local competition in the nation referenced in the record of this proceeding, CLECs in Maryland serve 4% of the end-user switched access lines, while the national figure is 10%.[2] Indeed, as of December 2001, the level of competition in Maryland had receded by a third from 6% to 4% and appeared to be regressing, joining South Carolina and Mississippi. Such a condition is not

[2] On December 9, 2002, following the conclusion of the hearings in this proceeding, the FCC issued an updated report on the status of local competition which updated the number of end-user switched access lines served by CLECs in Maryland to 6% and 11% nationally as of June 2002.

acceptable in Maryland after 8 years of effort. This situation no doubt results from federal actions but also from various Verizon operational issues, CLEC issues – financial and otherwise, and this Commission's delay in resolving our recent proceeding into the rates Verizon charges for wholesale unbundled network elements in Maryland.

Thus, Commission's consideration of the record developed in this proceeding shows the obvious need to improve the local competitive environment in Maryland. In order to ensure that local competition is sustainable into the future, the Commission directs Verizon to implement the requirements discussed below. The Commission finds that subject to Verizon complying with the conditions identified below, Verizon is technically in compliance with the §271 checklist as defined by the FCC. Furthermore, the Commission notes a number of concerns that must be addressed before the Commission can say that Verizon's entry into the Maryland long distance market is in the public interest. The Commission hereby conditions its recommendation to the FCC that Verizon's entry into the long distance market is in the public interest on Verizon addressing the concerns listed below in the manner ordered by the Commission.

1. Verizon's No Build Policy

This issue involves Verizon's provisioning of high capacity unbundled local loops. Several parties to this proceeding argued that Verizon improperly rejects CLEC orders for high capacity loops[3] when Verizon claims no facilities are available and construction is required, (hereinafter referred to as Verizon's "no build" policy). Based on the evidence in this case, the Commission believes that the impact of Verizon's "no build" policy pertaining to the availability of DS-1 and DS-3 facilities for use by CLECs creates a barrier to local competition in Maryland.

Verizon contends that its policy is based on a decision of the United States Court of Appeals for the Eighth Circuit holding that unbundling only applies to the incumbent local exchange carrier's ("ILEC") existing network. Verizon also notes that the FCC is considering whether to modify these rules. Finally, Verizon claims that CLECs can cause Verizon to build new facilities if CLECs order them as special access facilities and pay the minimum term of two months' worth of charges for special access DS-1s and one year's worth of charges for DS-3s before converting them to UNEs. The CLECs contend that Verizon's policy results in new facilities costing CLECs more than if these facilities were provisioned at UNE rates.

The Commission does not dispute the effect of the Eighth Circuit decision, and the Commission is cognizant of the fact that the FCC has previously found that similar Verizon policies in other states do not violate the competitive checklist. In this proceeding, however, the evidence supports the claim that Verizon's policy has the effect of increasing CLEC costs and provisioning intervals which delay the CLECs provision of service to the end user, and as such creates a barrier to competition. The record suggests that a number of CLECs are

[3] E.g., DS-1 and DS-3 loops or other high capacity facilities, including interoffice facilities or entrance facilities.

unaware that the special access facilities which are ordered because of the lack of available facilities may be converted to UNEs after two months for DS-1s and one year for DS-3s. This conversion policy enables the CLECs to have access to the high capacity facility without the excessive cost of maintaining the facility at the higher special access rates indefinitely.

Therefore, as a temporary measure, the Commission finds that if a CLEC orders a DS-1 as a UNE with a request for automatic conversion, and Verizon does not provision it because of lack of facilities, Verizon shall convert the UNE order to a special access order and then convert the newly-built special access facility to a UNE automatically after the tariffed time has elapsed. This automatic conversion will only occur in those situations where the CLEC originally requested UNE facilities, and this request was denied by Verizon. Moreover, the FCC rules and limitations on converting special access to UNEs shall be followed for each conversion. Verizon shall put this revised ordering arrangement in place within four months.

The Commission's concerns pertaining to the effect of Verizon's "no build" policy on competition have been echoed in other Verizon jurisdictions, including Virginia. There, the Virginia State Corporation Commission ("VSCC") has instituted a proceeding to consider this issue, and the practice is also under consideration in the FCC's Triennial Review. This Commission will actively monitor both proceedings and upon their conclusion take further action as may be necessary.

Finally, the Commission is concerned about the limited amount of information Verizon provides a CLEC when no facilities are available. Verizon is directed to identify to the CLEC the reason for each no facilities finding.

2. Dark Fiber

Dark fiber, analogous to unused copper loop or transport facilities, is fiber that is in place but has not been activated through the connection of the electronics/photonics to carry communications services. Dark fiber is useful to local exchange carriers in a variety of ways including the provision of advanced services or services offered over high bandwidth. Dark fiber can also be cost effective and can result in economies of scale being achieved by CLECs. In accordance with the FCC's rules and regulations, ILECs must make dark fiber available to CLECs pursuant to section 251(c)(3) of the Act. The Commission believes that the record in this case suggests the lack of accessible information from Verizon to CLECs prevents CLECs from identifying and locating existing dark fiber within Verizon's Maryland network. Further, it appears that the CLEC's inability to reserve or order dark fiber while a request for collocation arrangement is pending creates an additional barrier to the development of local competition in Maryland.

According to Verizon, the FCC addressed the second issue noted above in its recent Virginia Consolidated Arbitration Order. As a result, Verizon is now required in Virginia to permit CLECs to order the desired dark fiber ten business days after the CLEC requests a collocation arrangement. The Commission hereby directs Verizon to implement this policy in

Maryland. Thus, CLECs will be permitted to order dark fiber and collocation arrangements in this manner. The Commission believes that this new requirement will advance the development of competition for advanced services in Maryland, such as high speed data access.

With regard to the issue of whether Verizon provides adequate information to CLECs so that they might locate dark fiber, Verizon contends that the Company has improved this process by providing alternative routing to a requesting CLEC. While this change is a step in the right direction, it represents only a minimal improvement at best. The Commission hereby directs Verizon to continue to provide this alternative routing. Furthermore, the Commission directs Verizon to provide to a CLEC upon request, central office and all related termination points for all fiber facilities for any office or group of offices at which the CLEC is considering ordering dark fiber. This will enable CLECs to have access to more accurate information pertaining to the availability of dark fiber on routes where fiber is actually installed and will operate to remove a barrier to competition by improving access to UNEs and the quality of information available to CLECs.

3. Geographically Relevant Interconnection Points ("GRIPS")

Verizon has entered as evidence in this proceeding a Model Interconnection Agreement containing terms which require CLECs to establish with Verizon one or more GRIPs or virtual geographically relevant interconnection points ("VGRIPs") at designated or agreed upon points within each Local Access and Transport Area ("LATA") of Verizon's network. This Commission previously considered this proposal in Case No. 8887, the Sprint Communications Co., L.P./Verizon Arbitration, wherein the Commission rejected Verizon's GRIP/VGRIP proposals. The proposed language in the Model Interconnection Agreement is substantially the same as the language proposed by Verizon during the Sprint Arbitration as well as the language rejected by the FCC in the Virginia Consolidated Arbitration. This Commission's position on this issue remains unchanged. The Commission does not accept Verizon's GRIPs or VGRIPs proposals.

According to Verizon, its Model Interconnection Agreement has been modified to reflect the results of the FCC's Virginia Consolidated Arbitration Order. However, the Model Interconnection Agreement, which was dated prior to the issuance of the Virginia Consolidated Arbitration Order, was submitted as evidence in this proceeding. It does not reflect that change. The Commission hereby directs that Verizon shall not include GRIPs or VGRIPs provisions in any Model Interconnection Agreement in use in Maryland unless expressly authorized by this Commission or the FCC.

4. Billing

The Virginia State Corporation Commission's testing of Verizon Virginia's OSS did not separately test the accuracy of the Billing Output Specification/Bill Data Tape ("BOS/BDT") electronic billing system used by Verizon to generate bills for some CLECs. The evidence in this proceeding demonstrates the importance of having a means of ensuring that Verizon provides CLECs with timely and accurate paper and electronic bills. The Commission notes that the negative effects of incorrect billings falls more heavily on CLECs in a developing competitive market. The updated version of the Maryland Carrier-to-Carrier Guidelines, which enforces Verizon's performance, will become effective January 2003. They include metrics to measure important aspects of the billing process. These metrics require 95% of all billing claims to be acknowledged within two business days and also require that 95% of these billing claims be resolved within 28 days after acknowledgement.

This Commission has concerns that, under the stress of high commercial volumes electronic billing may experience unanticipated difficulties. Therefore, in order for this Commission to monitor whether Verizon's electronic billing is working successfully under commercial applications and volumes, the Commission directs Verizon to alter the report dimensions to include CLEC aggregate, CLEC specific, Verizon affiliate aggregate and Verizon affiliate specific information on the billing metrics. Furthermore, the Commission directs the Maryland Carrier-to-Carrier Collaborative ("Collaborative") to examine whether different metrics adopted in New Jersey or other jurisdictions are appropriate for use in Maryland.

5. Entrance Facilities

Verizon Maryland is required by the 1996 Act and the FCC to provide interconnection using all technically feasible means, including loop facilities. Verizon indicates that it will provide the types of interconnection such as that requested by Core Communications subject to appropriate amendments to the parties' interconnection agreement. According to Verizon, Core and some other CLECs are requesting a lesser form of interconnection which is not usually included in the interconnection agreements. The CLECs contend that this form of interconnection is necessary due to cost and provisioning time considerations. However, the Commission is pleased to note Verizon's willingness in Salisbury, Maryland to modify their previous policy by agreeing to interconnect with Core using its existing retail facilities in shared arrangement. This appears to remove a barrier to competition.

The FCC, in its interpretation of §251(c)(2), requires ILECs to provide interconnection that is "at least" equal in quality to that enjoyed by the ILEC itself. The FCC also requires ILECs to provide interconnection arrangements when the request is technically feasible, subject to the terms of the parties' interconnection agreements. The Commission finds that it is technically feasible in some instances for Verizon to provide entrance facility interconnection to requesting carriers over loop facilities that are shared with Verizon's retail customers, rather than over conventional interoffice facilities.

Furthermore, Verizon shall be required to provide entrance facilities to requesting CLECs over existing loop facilities that are shared with Verizon's retail customers when capacity exists. The fact that a CLEC has requested the shared facilities demonstrates that the CLEC is willing to accept a lesser quality form of interconnection, and the performance limitations that such lesser quality interconnection may entail. In order to accommodate CLECs seeking this form of interconnection, Verizon is directed to provide within thirty (30) days of accepting the conditions in this letter, a Model Interconnection Agreement amendment that can be adopted by CLECs seeking this form of interconnection with Verizon. This amendment shall be filed with and must be approved by the Commission. In addition, the Collaborative shall consider the issue of what metrics and PAP will apply in this situation. The Commission intends to monitor Verizon's provision of these facilities while the Collaborative is considering this issue.

The Commission is aware that many issues pertaining to interconnection trunking over loop facilities are under consideration in a separate Commission proceeding, Case No. 8881. The Commission believes that this proceeding will resolve the majority of the issues pertaining to this aspect of entrance facilities, and determine if any barriers to competition exist.

6. Enhanced Extend Loops

An Enhanced Extended Loop ("EEL") consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport. The record in this proceeding suggests that Verizon's requirement that CLECs order the component parts of EELs in a sequential, rather than a coordinated, manner requires CLECs to pay for facilities before they are assembled in useful form. Thus, the process by which Verizon requires CLECs to order EELs creates unwarranted delay and additional costs.

Evidence presented in this proceeding demonstrates that a different ordering process currently is being used in Massachusetts. The Commission hereby requires that Verizon adopt in Maryland the tariffed Massachusetts EEL ordering and billing process. In order to accommodate CLECs seeking EELs, Verizon is directed to provide to the Commission, within thirty (30) days of accepting the condition in this letter, a Model Interconnection Agreement amendment that can be adopted by any CLEC seeking this form of UNE. This amendment shall be filed with and must be approved by the Commission.

7. Line Sharing

Line sharing occurs when an incumbent is providing, and continues to provide, voice service on a particular loop to which a CLEC provides or seeks access in order to provide xDSL service. According to the evidence presented, where an end user formerly was provided voice and data services by Verizon and chooses to receive its voice services from a CLEC, the end user will lose its data or DSL services from Verizon. The Commission is extremely concerned about this potential side effect on a consumer's decision to engage in choice – that is that the customer has to weigh its desire to maintain its DSL service against its decision to select a competitive local exchange provider. The Commission is pleased that Verizon has indicated that it is willing to enter into technical and business discussions with CLECs to attempt to arrange the relationships necessary to make such a consumer decision unnecessary. Such an offer addresses the Commission's public interest concerns pertaining to this issue. The Commission directs that Verizon make the offer available to all CLECs.

8. Metrics Replication

The Commission recognizes the need to ensure that Verizon's performance in providing service to CLECs continues and improves after Verizon enters the long distance market in Maryland. For this reason, the Commission approved both the Carrier-to-Carrier Guidelines and the Performance Assurance Plan ("PAP"). The Commission relies upon Verizon to provide the metrics reports that measure Verizon's performance and trigger the payments applicable under the PAP.

In order to better ensure the accuracy of these reports, Verizon is directed to file exception reports refiling those metrics found to be in error. The metrics are to be corrected where the discovered error has an effect on the aggregate calculation of PAP remedies in excess of $1,000. This refiling shall occur in any instance where an error has been noted and corrected, regardless of what party discovers the error. After six months experience, the Commission will evaluate the need to continue this refiling requirement.

Furthermore, an ability to replicate the metrics reports provided by Verizon will allow the Commission to verify the accuracy of the metrics measuring Verizon's performance. The Commission shall require that Verizon, upon request of the Commission, hire a consultant who shall report directly to the Commission and shall train the Commission Staff on how to set up Maryland Performance Metrics replication. After the consultant is hired, Verizon shall provide Staff access to the Metrics Hotline to answer questions that may arise concerning the complementation of the Guidelines and shall cooperate with Staff to provide the data required to allow Staff to conduct replication as necessary to confirm the accuracy of Verizon's performance reports.

9. Directory Listing and Related Charges

The Virginia State Corporation Commission's OSS test did not include a meaningful examination of the accuracy of directory listings. The Commission is concerned that directory errors, both white and yellow pages, cause disruption to CLECs disproportionately. Thus, this Commission will be carefully monitoring directory listing errors, and will, if necessary, institute a special proceeding to address any concerns.

Further, testimony in this proceeding indicates that Verizon encourages CLECs to use the Directory Listing Inquiry pre-order query in order to ensure the accuracy of White Pages Listings. Verizon expressly stated that the Company currently does not charge for this inquiry. However, Verizon's Model Interconnection Agreement includes a charge for pre-order queries that includes the Directory Listing Inquiry. Since Verizon does not charge for this inquiry in Maryland, Verizon is hereby directed to amend its Model Interconnection Agreement used in Maryland within thirty (30) days of accepting the condition in this letter to indicate that no charges apply. Furthermore, Verizon is hereby prohibited from instituting such a charge unless the Company first obtains the approval of this Commission.

10. Unbundled Network Element ("UNE") Pricing

The record in this proceeding supports a finding that establishing an appropriate level of UNE rates, in particular UNE-P, is essential in encouraging competitive entry into the Maryland market. In Case No. 8879, the Commission currently is completing a comprehensive resetting of UNE rates. The Commission intends to complete that case and issue a final order soon.

The Commission concludes that permitting Verizon to continue charging the currently effective UNE rates will not adequately promote full-scale market entry in Maryland. The Commission is particularly concerned about the loop rate and the unbundled switching rate. Accordingly, Verizon is directed to reduce these rates in the manner described below.

With regard to the UNE loop rate, the Commission requires Verizon to agree to reduce this rate from the current statewide average of $14.50 to a statewide average of $12.00. Additionally, Verizon is required to reduce its end-office per minute-of-use switching element 56% from $0.003800 per minute to $0.001676 per minute. Finally, for the other rates previously instituted in Case No. 8731, Phase II, Verizon is directed to adopt an interim rate-setting approach similar to that the Company employed and the FCC approved in Verizon Virginia's § 271 filing. The Commission directs Verizon to file a list of these rates with the Commission at the same time that the Company accepts this condition.

Moreover, the Commission also requires that Verizon commit to make the rates adopted in Case No. 8879 retroactive to the effective date of the reduced rates discussed above. The effective date of these reduced rates shall be within five days of the date of this letter.

Finally, in the event that the Order issued in Case No. 8879 is subsequently overturned an appeal, Verizon shall commit to reinstituting the rates set forth above until such time as the Commission reconsiders the decision rendered in Case No. 8879 to the extent required by the Court.

11. Additional Policy Concerns

In addition to the conditions contained in numbered paragraphs 1 through 10 of this letter to which Verizon must respond, the Commission also has several policy concerns pertaining to competition within the State of Maryland.

A. Retention of the UNE-Platform

The Commission is extremely concerned that the FCC is considering modifications to the list of Unbundled Network Elements ("UNEs") and the availability of UNE-Platform ("UNE-P"). On November 20, 2002, this Commission, along 75 other State Commissioners from 33 other states, signed a letter to the FCC indicating support for continued State flexibility to maintain the UNE-P. The evidence in this proceeding demonstrates that increased competition in Maryland exists in large measure because of the availability of UNE-P. With very limited UNE-P and resale, Maryland achieved a local competition level of only 4% as of December 2001. In six months time, according to the FCC's most recent report on the status of local competition, Maryland went from 4% to 6% in the level of competition due primarily to UNE-P. It appears that without UNE-P that growth vector will clearly be reduced. The Commission believes that any alteration from UNE-P as presently constituted would have significant adverse effects on the competitive market in Maryland. However, the Commission continues to assert that a FCC determination on these matters will not preempt further consideration by this Commission of the appropriate list of UNEs in Maryland.

B. §272/Affiliates

The Commission is concerned that Verizon's interactions with its affiliates are conducted on the same arms-length basis as its interactions with any unrelated CLEC, in order to ensure that local exchange customers do not subsidize the long distance customers. Consequently, the Commission intends to closely and actively monitor Verizon's compliance with the separate affiliate requirements and associated safeguards contained in §272 of the 1996 Act. In particular, the Commission will carefully review the biennial audit that Verizon is required to obtain and pay for under §272(d)(1), which audit must be submitted to this Commission in accordance with §272(d)(2). Furthermore, the Commission will participate fully in the biennial audit proceedings conducted by the FCC, and institute its own proceeding, if necessary.

C. E911

The Commission has reservations about Verizon's use of the information contained in the E911 database, which does not appear to be consistent with the purposes envisioned by the legislature when the E911 program was established. The E911 database was developed for a very specific purpose, to enable law enforcement and emergency service workers to locate people in emergency, and sometimes life threatening, situations. The E911 database was not developed for use in the manner Verizon has attempted to use it in this proceeding. Because the E911 database was not developed to provide local exchange carrier line counts, its use for this purpose is questionable, as are the results obtained through the database. Furthermore, these results are not verifiable. The Commission encourages Verizon to develop a more transparent and verifiable source of statistics to estimate the level of competition.

CONCLUSION

Upon implementation of these various operational enhancements, the Commission believes that continued development of a competitive market will occur in Maryland. That outcome is surely the intent of the 1996 Act and the FCC's goal as well. Thus, the envisioned reward of long distance entry to Verizon Maryland should be afforded them. To move Maryland more toward the national average in local competition is an outcome that will also surely benefit Maryland customers, both business customers and individual citizens alike.

Verizon is directed to respond to this letter with a written confirmation that Verizon will comply with the conditions set forth in items 1 through 10 above prior to filing its §271 application with the FCC.

By Direction of the Commission,

/s/*Catherine I. Riley*
Catherine I. Riley, Chairman

/s/*J. Joseph Curran, III*
J. Joseph Curran, III, Commissioner

/s/*Gail C. McDonald*
Gail C. McDonald, Commissioner

/s/*Harold D. Williams*
Harold D. Williams, Commissioner

cc: All Parties and Interested Persons of Record